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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

2006 NOV 21 P 1:00

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG

AZ CORP COMMISSION
DOCUMENT CONTROL

In the matter of:)
GARY WAYNE HARDY, CRD#1298371,)
dba HARDY ASSET MANAGEMENT, and)
SHERRY HARDY, husband and wife)
1711 W. Gary Drive)
Chandler, AZ 85224)
HARDY ASSET MANAGEMENT, a sole)
proprietorship)
4625 S. Wendler Drive, Suite 111)
Tempe, AZ 85282)
Respondents.)

DOCKET NO. S-20426A-05-0768

**SECURITIES DIVISION'S PROPOSED
RECOMMENDED OPINION AND ORDER**

Arizona Corporation Commission

DOCKETED

NOV 21 2006

DOCKETED BY

Pursuant to the Administrative Law Judge's Order, the Securities Division submits the attached proposed Recommended Opinion and Order against Respondents Gary Wayne Hardy and Hardy Asset Management, a sole proprietorship.

RESPECTFULLY SUBMITTED this 21st day of November, 2006.

By:

Pamela T. Johnson
Attorney for the Securities Division of the
Arizona Corporation Commission

ORIGINAL and 13 copies of the foregoing hand-delivered this 21st day of November, 2006 to:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix AZ 85007

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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MIKE GLEASON
KRISTIN K. MAYES
BARRY WONG

In the matter of:)	DOCKET NO. S-20426A-05-0768
GARY WAYNE HARDY, CRD#1298371,)	RECOMMENDED OPINION AND ORDER
dba HARDY ASSET MANAGEMENT, and)	
SHERRY HARDY, husband and wife)	
1711 W. Gary Drive)	
Chandler, AZ 85224)	
HARDY ASSET MANAGEMENT, a sole)	
proprietorship)	
4625 S. Wendler Drive, Suite 111)	
Tempe, AZ 85282)	
Respondents.)	

DATE OF HEARING: November 16, 2006

PLACE OF HEARING: Phoenix, Arizona

PRESIDING OFFICER: Marc E. Stern

APPEARANCES: Securities Division of the Arizona Corporation Commission
represented by Pamela T. Johnson, Senior Counsel

BY THE COMMISSION:

On October 27, 2005, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity of Hearing Regarding Proposed Order to Cease and Desist, Order for Restitution, for Administrative Penalties, of Revocation, and for Other Affirmative Action ("Notice") against Gary Wayne Hardy, Sherry Hardy and Hardy Asset Management ("Respondents"), alleging violations of the Arizona Securities Act in connection with Hardy's solicitation and misappropriation of investment funds through the accounts of his licensed

1 investment adviser Hardy Asset Management. All Respondents were duly served with the Order.
2 requested a hearing in the matter. On November 23, 2005, Gary Wayne Hardy filed a timely
3 Answer requesting a hearing. On December 1, 2006, Sherry Hardy filed a Notice of Bankruptcy
4 Filing. On December 13, 2006, the Division filed a Notice of Dismissal of Sherry Hardy.

5 A public hearing in this matter was conducted before a duly authorized Administrative Law
6 Judge of the Commission at its offices in Phoenix, Arizona on November 16, 2006. Respondents
7 failed to appear in person or through counsel. Pamela T. Johnson appeared on behalf of the
8 Division. At the conclusion of the hearing this matter was taken under advisement by
9 Administrative Law Judge Marc E. Stern pending submission of a Recommended Opinion and
10 Order to the Commission.
11

12 * * * * *

13 At the hearing, the Division presented testimony of Meg Kennedy, Legal Assistant of the
14 Division. Exhibits S-1 through S-10 were admitted.

15 Having considered the entire record herein and being fully advised in the premises, the
16 Commission finds, concludes and orders that:

17 **FINDINGS OF FACT**

18 1. HARDY is and was at all pertinent times a registered securities salesman in Arizona,
19 since August 1984, CRD# 1298371, and operated as a registered securities salesman and an
20 investment adviser. HARDY was registered in Arizona in association with Allmerica Investments,
21 Inc. ("Allmerica") from August 8, 1984 to July 31, 2000. From August 17, 2000, HARDY was
22 registered in Arizona in association with SunAmerica Securities, Inc. ("SunAmerica"), until he
23 resigned on or about June 9, 2005. HARDY is currently not affiliated with any securities dealer. ¹
24

25 _____
26 ¹ Hearing Exhibit S-1 ("S-1"), Certificate of registration as a securities salesman with the Arizona
Corporation Commission for Gary Wayne Hardy. S-4, CRD records for Gary Wayne Hardy. S-5, CRD records for
Hardy Asset Management, Inc. Testimony of Meg Kennedy, Securities Division.

1 2. HARDY ASSET MANAGEMENT, CRD# 116821, a sole proprietorship owned and
2 operated by HARDY, is an Arizona licensed investment adviser since October 1, 2000, in the
3 business of offering financial services including securities sales and investment advice to clients
4 for a fee.²

5 3. HARDY and HARDY ASSET MANAGEMENT may be referred to herein as
6 "Respondents".

7 4. In or around February 2005, a SunAmerica customer purchased securities in the form
8 of certificates of deposit ("CDs") called "Internotes" from HARDY. The customer sent HARDY a
9 check for \$50,000 payable to HARDY ASSET MANAGEMENT. HARDY sent the customer a
10 document purportedly showing \$50,000 worth of "Selected Bonds" that he claimed to have acquired
11 for the customer. Despite several requests to HARDY in the months following this investment,
12 HARDY failed to provide documentation as to how or if the money was invested. On or about June
13 20, 2005, the customer reported the matter to the Tempe Police Department.³

14 5. Upon questioning by the Tempe Police Department, HARDY claimed that he had
15 misappropriated funds from approximately nine investors.⁴ Further investigation by the Tempe
16 Police Department revealed that HARDY misappropriated \$582,076.00 from nine customers in 16
17 transactions between 1998 and 2005.⁵

18 6. None of the investors received confirmations, statements, or other written information
19 verifying the existence of the investments. HARDY sent some customers falsified HARDY ASSET
20

21 ² S-2, Certificate of licensing as an investment adviser with the Arizona Corporation Commission for Hardy
22 Asset Management. S-4, CRD records for Gary Wayne Hardy. S-5, CRD records for Hardy Asset Management, Inc.
23 Testimony of Meg Kennedy, Securities Division.

24 ³ S-6(c), Affidavit of Investor Samuel A. Edmondson, with attached exhibits; S-10, Certified copy of Tempe
25 Police Department Incident Report dated 6/20/05 re Incident Number 05-102531, pp. 1-2, Supp. Dated 08/19/05 pp. 1-
26 4, 25. Testimony of Meg Kennedy, Securities Division.

⁴ S-10, *supra*, pp. 5-18.

⁵ S-10, *supra*, Supp. Date 10/24/05 pp. 1-2 and attached victim summaries, Supp. Dated 07/19/06 pp. 1-4, 18-
25; S-9 List of Investors prepared by the Division with amounts and dates of investments, summarizing losses
evidenced in S-6(a)-(g). Testimony of Meg Kennedy, Securities Division.

1 MANAGEMENT statements or “customer reports” reflecting their purported purchase of the
2 securities, while other customers received no information or documents concerning how HARDY
3 invested their money.⁶

4 7. The Division introduced into evidence Affidavits from six investors, which included
5 copies of investor checks written to HARDY ASSET MANAGEMENT, and statements
6 demonstrating that the investors believed that they were purchasing legitimate investments,
7 including CDs, bonds and/or annuities.⁷

8 8. Ms. Kennedy testified that she interviewed one additional investor who believed that he
9 invested in an annuity. The investor’s check was paid to “HARDY ASSET MANAGEMENT” and
10 Respondents provided him a HARDY ASSET MANAGEMENT Account Statement that reflected
11 an investment in a 5-year “Private CD Annuity” through “Capital Bank, Norfolk, VA, with a
12 Maturity Date of 3/29/2009.”⁸

13 9. The Tempe Incident Report described the statements of each of the nine investors.
14 Eight of them made their checks payable to HARDY ASSET MANAGEMENT, and stated that they
15 trusted HARDY and believed that HARDY would place their funds in legitimate investments.⁹

16 10. The ninth investor made her check payable to “Capital Investment” before HARDY
17 had started doing business as HARDY ASSET MANAGEMENT. She stated that although she had
18 never received any verification that the money had actually been invested where Hardy stated it was
19 invested, she did receive quarterly reports from HARDY on her purported investment.¹⁰

20
21 ⁶ S-6(a)-(g), *supra*; S-10, *supra*. Testimony of Meg Kennedy, Securities Division.

22 ⁷ S-6(a)-6(g), Affidavits of Investors with attached documents evidencing investments; S-10, *supra*, pp. 1-4,
18-25, and Supp. Dated 07/19/06 pp. 1-4. Testimony of Meg Kennedy, Securities Division.

23 ⁸ S-7, Documents evidencing investments placed with Hardy Asset Management by Investors MZ.
24 Testimony of Meg Kennedy, Securities Division.

25 ⁹ S-10, *supra*, pp. 1-4, Supp. Dated 2/28/05 pp. 18-25, Supp dated 7/19/06 pp. 1-4.

26 ¹⁰ S-10, *supra*, Supp. Dated 8/19/05 p. 21. *See also* S-8, Certified copy of Motion for Entry of Default
Judgment with attached Affidavit of Margot K. Wallin in Support of Sum Certain Damages, with exhibit.

1 11. The Tempe Police Department investigation revealed that, in fact, HARDY did not
2 invest the money as he represented, but used the funds of all nine investors for his own purposes.¹¹

3 12. In or around April 2006, HARDY consented to the imposition of a bar from
4 association with any NASD member in any capacity.¹²

5 II.

6 CONCLUSIONS OF LAW

7 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
8 Arizona Constitution and the Securities Act and the Investment Management Act.

9 2. Respondents offered or sold securities within or from Arizona, within the meaning
10 of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

11 3. In connection with the offer or sale of securities within or from Arizona, HARDY
12 directly or indirectly: (i) employed a device, scheme or artifice to defraud; (ii) made untrue
13 statements of material fact or omitted to state material facts which were necessary in order to make
14 the statements made not misleading in light of the circumstances under which they were made; or
15 (iii) engaged in transactions, practices or courses of business which operated or would operate as a
16 fraud or deceit upon offerees and investors. HARDY's conduct includes, but is not limited to, the
17 following:

18 a.) Misrepresenting and/or failing to disclose the use of the customers'
19 investment funds by stating that he was placing their funds in various types of
20 investments;¹³

21 b.) Falsifying information about the purported investments;¹⁴

22 d.) Failing to disclose his own financial condition;¹⁵ and

23 ¹¹ S-10, *supra*, pp. 24-25.

24 ¹² S-3, *supra*.

25 ¹³ S-6(a)-(g), *supra*; S-7, Documents evidencing investments placed with Hardy Asset Management by
26 Investors Milton & Helen Zehr; S-8, Certified copy of Motion for Entry of Default Judgment with attached Affidavit of
Margot K. Wallin in Support of Sum Certain Damages, with exhibit, re investment of Rachel R. Baca; S-10, *supra* pp.
1-4, 18-25, and Supp. Dated 07/19/06 pp. 1-4. Testimony of Meg Kennedy, Securities Division.

¹⁴ *Id.*

1 e.) Misappropriating investment funds for his personal use.¹⁶

2 4. Respondents' misrepresentations, omissions of material facts, and misappropriation of
3 customer funds in connection with the purported sale of the CDs, bonds and annuities constituted
4 dishonest and unethical conduct in business and financial matters, pursuant to A.R.S. § 44-3201(14).

5 5. HARDY's conduct is grounds to revoke HARDY's registration as a securities
6 salesman with the Commission, pursuant to A.R.S. § 44-1962.

7 6. Respondents' conduct is grounds to revoke HARDY ASSET MANAGEMENT's
8 license as an investment adviser with the Commission pursuant to A.R.S. § 44-3201, and revocation
9 of the investment adviser license of HARDY ASSET MANAGEMENT would be in the public
10 interest.

11 7. Respondents' conduct is grounds for a cease and desist order pursuant to A.R.S. §
12 44-2032, A.R.S. § 44-3292, A.R.S. § 44-1962, and A.R.S. § 44-3201.

13 8. Respondents' conduct is grounds for an order of restitution pursuant to A.R.S. § 44-
14 2032, A.R.S. § 44-3292, A.R.S. § 44-1962, and A.R.S. § 44-3201.

15 9. Respondents' conduct is grounds for administrative penalties under A.R.S. § 44-
16 2036, A.R.S. § 44-3296, A.R.S. § 44-1962, and A.R.S. § 44-3201.

17 **III.**

18 **ORDER**

19 THEREFORE, on the basis of the Findings of Fact and Conclusions of Law, the
20 Commission finds that the following relief is appropriate, in the public interest, and necessary for the
21 protection of investors:

22 IT IS ORDERED, pursuant to A.R.S. § 44-2032, A.R.S. § 44-3292, A.R.S. § 44-1962 and
23 A.R.S. § 44-3201, that Respondents, and any of Respondents' agents, employees, successors and
24 assigns, permanently cease and desist from violating the Securities Act and the Investment
25

26 ¹⁵ *Id.*; S-10, *supra*, pp. 5-18.

¹⁶ S-10, *supra*, pp. 5-18.

1 Management Act. Respondents shall not sell any securities in or from Arizona without being
2 registered in Arizona as dealers or salesmen, or exempt from such registration. Respondents shall
3 not sell securities in or from Arizona unless the securities are registered in Arizona or exempt from
4 registration. Respondents shall not transact business in Arizona as investment advisers or
5 investment adviser representatives unless licensed in Arizona or exempt from licensure.

6 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, A.R.S. § 44-3292, A.R.S. §
7 44-1962, and A.R.S. § 44-3201, that Respondents shall, jointly and severally, pay restitution to the
8 Commission in the amount of \$582,076.00. Any amount outstanding shall accrue interest at the
9 rate of 10% per annum from the date of this Order until paid in full. Payment shall be made to the
10 "State of Arizona" to be placed in an interest-bearing account maintained and controlled by the
11 Commission. The Commission shall disburse the funds on a pro rata basis to investors shown on
12 the records of the Commission. Any restitution funds that the Commission cannot disburse
13 because an investor refuses to accept such payment shall be disbursed on a pro-rata basis to the
14 remaining investors shown on the records of the Commission. Any funds that the Commission
15 determines it is unable to or cannot feasibly disburse shall be transferred to the general fund of the
16 state of Arizona.

17 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, A.R.S. § 44-3296, A.R.S. §
18 44-1962, A.R.S. § 44-3201, that Respondents shall, jointly and severally, pay an administrative
19 penalty in the amount of \$150,000.00. Payment shall be made in full on the date of this Order to
20 the "State of Arizona." Any amount outstanding shall accrue interest at the rate of 10% per annum
21 from the date of this Order until paid in full. The payment obligations for these administrative
22 penalties shall be subordinate to any restitution obligations ordered herein and shall become
23 immediately due and payable only after restitution payments have been paid in full or upon
24 Respondents' default with respect of Respondents' restitution obligations.

25 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-1962, that Respondent HARDY's
26 securities salesman registration is revoked.

1 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-3201, that HARDY ASSET
2 MANAGEMENT's investment adviser license is revoked.

3 For purposes of this Order, a bankruptcy filing by any of the Respondents shall be an act of
4 default. If any Respondent does not comply with this Order, any outstanding balance may be
5 deemed in default and shall be immediately due and payable.

6 IT IS FURTHER ORDERED, that if any Respondent fails to comply with this order, the

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1 Commission may bring further legal proceedings against that Respondent.

2 IT IS FURTHER ORDERED that this Order shall become effective immediately.

3 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

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6 CHAIRMAN

COMMISSIONER

7
8 COMMISSIONER

COMMISSIONER

COMMISSIONER

9
10 IN WITNESS WHEREOF, I, BRIAN C. McNEIL,
11 Executive Director of the Arizona Corporation
12 Commission, have hereunto set my hand and caused the
13 official seal of the Commission to be affixed at the
14 Capitol, in the City of Phoenix, this _____ day of
15 _____, 200__.

16 _____
BRIAN C. McNEIL
Executive Director

17
18 _____
19 DISSENT

20 _____
21 DISSENT

22 This document is available in alternative formats by contacting Linda Hogan, Executive Assistant
23 to the Executive Director, voice phone number 602-542-3931, E-mail lhogan@azcc.gov.

24 (ptj)